



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

December 20, 2004

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

This letter reports two violations of the Antideficiency Act, as required by United States Code, Title 31, Section 1351.

The first violation occurred in account 13X1450 (Public Law 106-398), Operations, Research and Facilities, of the National Oceanic and Atmospheric Administration (NOAA). Information about the possible violation first became known in April 2004 when the Office of the General Counsel (OGC) of the Department of Commerce (Department) was asked to review a modification to a 2000 agreement between NOAA's Pacific Marine Environmental Laboratory (PMEL) and the University of Washington. The 2000 agreement was not reviewed by OGC before its execution; however, it was reviewed by OGC in 2004 as part of its clearance process for the modification. During this review, OGC found an open-ended indemnification clause in the 2000 agreement. Such a clause is a *prima facie* violation of the Antideficiency Act because it can never be determined that sufficient funds have been appropriated to cover the contingency. No liability claims were filed against this agreement. Mary Langlais, Executive Director, Office of Oceanic and Atmospheric Research (OAR), was the official responsible for the violation.

The second violation occurred in 13X1450 (Public Law 106-553), Operations, Research and Facilities, of NOAA. Information about the possible violation first became known in May 2004, when OGC was asked to review a modification to a 2001 agreement between PMEL and the Monterey Bay Aquarium Research Institute. The 2001 agreement was not reviewed by OGC before its execution; however, it was reviewed by OGC in 2004 as part of its clearance process for the modification. During this review, OGC found a second open-ended indemnification clause in the 2001 agreement. No liability claims were filed against this agreement. Mary Ann Whitcomb, Deputy Chief Financial Officer for OAR, was the official responsible for the violation.

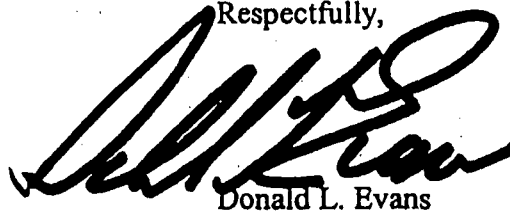
In these two instances there is no evidence that the violations were willful or knowing. Thus, the Department has not notified the Department of Justice of the violations. Both violations occurred at a time of insufficient staffing. Ms. Langlais is no longer employed by the Department, and thus the Department has no recourse against her. Ms. Whitcomb will receive a letter of admonishment, which was determined to be sufficient given the facts.

NOAA has taken the following steps to correct the problems:

- Both agreements have been revised and the indemnification clauses eliminated.
- OAR has revised its policies and now requires all agreements, modifications, and amendments to be reviewed and cleared by OGC. All OAR field offices are complying with this procedure, which conforms to Departmental requirements for legal review, as set forth in the *Department of Commerce Interagency and Other Special Agreements Handbook* (April 2004).
- The OAR Agreements Handbook has been updated, and now includes agreement templates.
- At least one individual from each OAR program and laboratory attended OGC-provided training on the legal authorities governing agreements, and the requirement for legal review and clearance of all agreements.
- NOAA is currently reviewing other transactions, such as real property agreements, to ensure that they do not contain indemnification language.

An identical report has been submitted to the Speaker of the House of Representatives and the President of the Senate.

Respectfully,

A handwritten signature in black ink, appearing to read "D. L. Evans", written in a cursive style.

Donald L. Evans



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

December 20, 2004

Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

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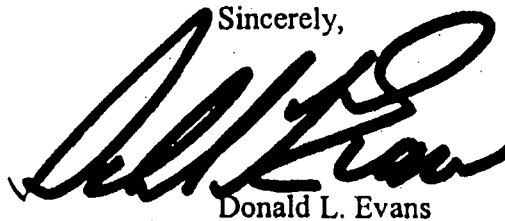
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Sincerely,

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Donald L. Evans



December 20, 2004

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515

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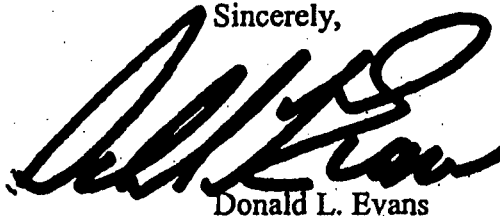
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